



## Toronto Police Services Board Report

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November 10, 2021

To: Chair and Members  
Toronto Police Services Board

From: James Ramer, M.O.M.  
Chief of Police

**Subject: Chief's Administrative Investigation of the Custody Injury to Mr. Dafonte Miller**

### **Recommendation(s):**

It is recommended that the Toronto Police Services Board (Board) receive the following report.

### **Financial Implications:**

There are no financial implications relating to the recommendation contained within this report.

### **Background / Purpose:**

Whenever the Special Investigations Unit (S.I.U.) investigates an incident involving serious injury or death, provincial legislation requires the chief of police, of the relevant police service, to conduct an administrative investigation.

Former Chief Mark Saunders (2585), requested the Waterloo Regional Police Service (W.R.P.S.) conduct this administrative investigation on behalf of the Toronto Police Service (T.P.S.) to ensure its independence.

A Superintendent and two Inspectors from W.R.P.S. conducted the administrative investigation and examined the policies of, services provided by and the conduct of police officers as dictated by s.11 of Ontario regulation 267/10, pursuant to the *Police Services Act* (1990).

The W.R.P.S. administrative investigation report and a supplementary report detailing the conduct of now retired Detective John Theriault (1408) are attached herein.

The W.R.P.S. administrative investigation made recommendations for changes to T.P.S. Procedure 13-16 (Special Investigations Unit) and made findings regarding the conduct of T.P.S. officers who were involved in this case.

This report will detail those recommendations, findings and the Service's response.

### **Conduct Issues:**

Police Constable Michael Theriault (65847), was charged and convicted under the *Criminal Code* in relation to this event. An appeal of his conviction and sentence has been dismissed by the courts. He has sought leave to appeal to the S.C.C. He is currently serving a sentence of nine-months.

Constable Theriault's actions and the misconduct arising therefrom are properly the subject of a parallel Part V, *Police Services Act* (P.S.A.) investigation and the Service is seeking Constable Theriault's termination.

Constable Theriault has been served with Notices of Hearing under the Act and is currently before the Tribunal.

In relation to the conduct now retired Detective John Theriault (1408) the following findings were provided by W.R.P.S.:

*"At the time of this incident there was significant public scrutiny surrounding the fact that Michael Theriault's father, John Theriault was also, at the time, a Toronto Police Officer who worked in their Professional Standards Unit. There was suggestion that John Theriault may have improperly influenced this investigation or any decisions made regarding S.I.U. notification, and given that would directly impact the reputation of Toronto Police Service...."*

*W.R.P.S. found no information in this regard. W.R.P.S.'s review confirmed John Theriault was present at the scene of the incident to support his sons after the confrontation (coming from his house that was the scene of the original interaction and in the neighbourhood). W.R.P.S. was unable to find any information or indication that he offered any undue influence in this matter or became involved in this matter, or was involved in any decision regarding the notification of the S.I.U."*

In relation to the conduct of the Service S.I.U. Designate and Chief's Liaison Officer the following comments are provided:

*"Section 2 of O. Reg. 267/10 allows the Chief of Police to designate a uniform senior officer of the Service, who is not a Subject Officer or Witness Officer in the incident, to act in the place of the Chief of Police."*

*The Chief's S.I.U. On-Call Designate assumes all the duties and powers of the Chief of Police in matters respecting an incident under investigation by the S.I.U. The Chief of Police has authorized the following senior officers to act in this role:*

- *Uniform Senior Officer – authorized by the Chief of Police*
- *Duty Senior Officer”*

The Chief's S.I.U. On-Call Designate will notify the S.I.U. and direct the Service's response to the S.I.U. investigation as events unfold.

On December 28, 2016, then Inspector Peter Moreira (470) was notified of this event by the Durham Regional Police Service (D.R.P.S.). At this time, Inspector Moreira was the Chief's S.I.U. On-Call Designate.

Inspector Moreira consulted with now retired Inspector Edward Boyd (6468) regarding the circumstances of this event.

At that time, Inspector Boyd was the Chief's S.I.U. Liaison Officer, which was defined as:

*“A uniform senior officer of the Toronto Police Service designated, by the Chief of Police to act as the main liaison with the S.I.U. in all matters relating to S.I.U. investigations. The Chief's S.I.U. Liaison Officer oversees the Chief's S.I.U. On-Call Designated Authority Cadre and Professional Standards S.I.U. Liaison Section while in the field.”*

In his role as the Chief's S.I.U. Liaison Officer, Inspector Boyd made the final decision to not notify the S.I.U. of the circumstances of Mr. Miller's injuries and Constable Theriault's role in this event.

Inspector Moreira was subordinate to Inspector Boyd in the final decision making process and therefore no discipline was commenced against Inspector Moreira.

Inspector Boyd has since separated from the Service and is no longer governed by the P.S.A. However, important changes to Service Procedures have been identified by this investigation, which will bring clarity and consistency to the notification of the S.I.U. in the future. These changes are detailed below:

### **Recommendation for Changes to T.P.S. Procedure 13-16:**

W.R.P.S. investigator examined the following T.P.S. procedures:

- Procedure 01-01 (Arrest);
- Procedure 13-16 (Special Investigations Unit);

- Procedure 15-01 (Use of Force);

W.R.P.S. recommended the Service examine Procedure 13-16 to make changes clarifying off-duty events and to require the Designated Authority to make fulsome inquiries when there is an off duty event where the S.I.U. mandate is or may be invoked.

### **T.P.S. Response to the W.R.P.S. Recommendations:**

On December 1, 2020, the *Special Investigations Unit Act, 2019* (S.I.U.A.) Chapter 1, Schedule 5, came into effect.

The procedural deficiencies identified in the W.R.P.S. administrative investigation have been clarified and clearly defined by the S.I.U.A.

T.P.S. Procedure 13-16 (Special Investigations Unit) has been amended to reflect these legislative requirements (see attached updated procedure).

Specifically, the Procedure has been updated and now states:

*“Police Officer – S.I.U. Investigations in reference to Special Investigations Unit (S.I.U.) investigations means a police officer in the execution or purported execution of duty. Off-duty events may be subject to an S.I.U. investigation. For example, but not limited to, the following events:*

- *where a police officer verbally identified themselves as a police officer;*
- *where a police officer produces police identification;*
- *where a police officer engages in an investigation;*
- *where a police officer effects an off-duty detention or arrest of any person;*
- *where a police officer uses police equipment or property;*
- *where a police officer operates a Service vehicle; or*
- *where a police officer otherwise engages their oath of office.*

Training and direction has been provided to T.P.S. members involved in the reporting process detailing these changes including, the Chief’s on-call S.I.U. Designates Authorities, the Duty Senior Officers, Toronto Police Operations Centre and the Professional Standards Special Investigations Unit Liaison officers.

The Designated Authorities were instructed to contact the Lead Designated Authority should there be any concerns when assessing interactions related to off-duty conduct. The application of s.15(1) and 15(2) of the S.I.U.A. was explained in detail, with emphasis added to the critical analysis of engagement of police powers in off-duty incidents. If a Designated Authority is unclear, or if details would present a dilemma,

they can and will rely on contacting the S.I.U. if a reasonable belief exists that the officer's conduct may have been a contributing factor in the incident being investigated.

Acting Staff Superintendent Robert Johnson, Strategy and Risk Management, and a representative of the Waterloo Regional Police Service, will be in attendance to answer any questions that the Board may have regarding this report.

Respectfully submitted,

James Ramer, M.O.M.  
Chief of Police

\*original copy with signature on file in Board office